

CALIFORNIA VICTIM COMPENSATION and GOVERNMENT CLAIMS BOARD
Government Claims Program

**630 "K" Street
First Floor Hearing Room
Sacramento, California
Friday, August 22, 2003**

**PROPOSAL FOR THE CONTINUED USE OF CLAIMS EXAMINERS TO
INVESTIGATE CLAIMS AGAINST THE STATE**

Summary

This report provides an analysis of the Board's Claims Examiner Pilot and recommends that the Board continue utilizing Claims Examiners to investigate claims against the State and submit recommendations to the Board for final decision.

Background

At the meeting of June 28, 2002, the Board directed the Executive Officer to appoint Claims Examiners to a one-year pilot project to investigate and analyze claims filed with the Government Claims Program under the Tort Claims Act. Using Claims Examiners was intended to provide claimants and affected state agencies the opportunity to more fully explain their respective positions on claims. As a result, the Board would be provided with more substantial information upon which to base its final decision. The Board further directed staff to assess the types of issues and trends that create claims and to note if there were conditions and practices with particular agencies that give rise to claims so that the Board may propose corrective action to the affected State agencies.

The Board may hear evidence for and against claims against the State and may delegate this function to any employee of the State pursuant to Government Code section 912.8. The Board is also authorized to assign its fact-finding functions to examiners and may appoint examiners deemed necessary for the performance of its duties. (Gov. Code, §§ 13907 and 13908.) Finally, while all members of the public are entitled to provide comment at Board meetings, there is no express statutory right of government claimants to present their claims directly to the Board.

Prior to the implementation of the Claims Examiner Pilot, the Board provided the following claimants an opportunity to present their claims directly to the Board:

- Persons who filed applications to present late claims that were less than \$5,000;
- Persons who filed claims arising from contractual obligations of the State where the affected departments recommended rejection of the claim;
- Persons who requested equitable relief from the Board where no legal recourse was otherwise available; and
- State employees whose claims for equitable relief were recommended for denial.

The Claims Examiner Pilot applied the same criteria to determine which claimants were offered a conference with a Claims Examiner. Prior to the Claims Examiner Pilot, staff generally prepared write-ups that summarized what the claimant was asking for, presented the affected agency's recommendations, and briefly offered a staff recommendation. Under the Claims

Examiner Pilot, Claims Examiners investigated facts of the claims and presented the Board with more thorough analyses of the claims and recommendations.

Implementation of Board Resolution

Organizational Realignment. A Claims Examiner Project Team, under the general direction of the Administration Division Deputy Executive Officer, was formed to develop the workflow process for the pilot and document the process. Because the Board did not have budget authority to hire Claims Examiners, staff were redirected to serve as Claims Examiners. A Staff Services Manager I and an Associate Governmental Program Analyst served as Claims Examiners, in addition to handling other duties associated with the Government Claims Program.

Conferences Held by Claims Examiners. Claims Examiners held 54 investigative conferences during the first year of the pilot. Fourteen involved personal appearances and 40 were conducted using telephone conferences. All conferences were held in Sacramento. By the end of June 2003, Claims Examiners had submitted 51 written recommendations to the Board, of which 49 (or 96%) were adopted as the Board's final decision. Sixty-three percent of the recommendations were to allow or partially allow the claim.

Customer Satisfaction Survey. Customer satisfaction surveys were sent to each claimant and department representative who participated in a conference. Twenty-seven surveys were returned, nine from claimants and 18 from department representatives. Seventy-eight percent or more of those surveyed agreed or strongly agreed that they received excellent service; the conference itself was a positive experience; the pre-conference process was positive and that the hearing location was convenient and comfortable. Of special note is that 100 percent of the department representatives surveyed agreed or strongly agreed that the pre-conference process was positive.

Prior to the Claims Examiner Pilot, the Board had distributed surveys to claimants who had presented their claims directly to the Board at a regularly scheduled Board meeting. Seventeen surveys were returned. Seven of the surveys were from persons who presented their claims to the Board in person and ten were from claimants who presented their claims to the Board telephonically. Of the seven who personally appeared, the degree of satisfaction with the process was only slightly below that of persons who participated in the Claims Examiner Pilot (71% or more agreed or strongly agreed with the statements compared to 78% or more of the Claims Examiner Pilot participants). However, those who participated in Board meetings telephonically responded less favorably. Only 10% agreed or strongly agreed that they received excellent service and that the experience was positive.

In addition, comments solicited on the survey of Board meeting participants indicated that claimants felt they were not given adequate time to present their claims and that the Board members' decisions were preconceived.

Trends. The Claims Examiner Pilot has identified a few significant trends. For instance, there have been numerous state employee claims dealing with compensation and benefit issues. The common factor in these claims appears to be that benefit information was either not explained to the employee or inadequately comprehended by the employee.

Another observation is that most of the contract claims submitted involve verbal changes to existing contracts without the parties first completing necessary administrative requirements.

This is not a problem identified with any particular department and appears to be widespread with departments and vendors.

Not all notified departments and claimants have participated in their scheduled claim conferences. However, the lack of participation by a claimant or department at a conference has not appeared to have adversely impacted staff's ability to prepare a thorough analysis and recommendation on the claim. In fact, many claimants and agency staff have been satisfied with informally providing information and asking questions in separate telephone conversations with Claims Examiners. This has particularly seemed to be the case with state employee claims.

Reconsideration Requests. Although information on a claimant's ability to seek reconsideration of the Board's decision to adopt a Claims Examiner's recommendation has been provided to claimants, there have been no formal requests for reconsideration. Five claimants disagreed with Claims Examiner recommendations and asked to address the Board. They did so at the same Board meeting at which the Claims Examiner's recommendation was being considered.

Process Improvements. The average processing time to complete the Claims Examiner process was 106 days from the time the claim was assigned to a Claims Examiner and the date the Board acted on the Claims Examiner's recommendation. The average total processing time has continuously improved over the life of the pilot. During the first quarter of the 02/03 fiscal year, the average processing time to complete the Claims Examiner process was 123 days. The average processing time for the fourth quarter was 81 days, a decrease in processing time of 42 days.

Unfortunately, there is still a significant lag between the time the Board receives a claim and the date it is referred to a Claims Examiner for resolution. On average, there is a delay of 234 days between the date a claim is received and the date it is referred to a Claims Examiner. There are many reasons referral to a Claims Examiner may be delayed. However, the most prominent reason for delay is due to the lack of responsiveness from the affected agencies. Repeated requests for recommendations from affected agencies frequently go unanswered. Current criteria for determining which claims are referred to the Claims Examiner process include an assessment of affected agencies' recommendations. Board staff will continue working to identify more efficient methods for obtaining department positions in a timely manner.

It has also been determined that not all claims require an investigative conference. For many claims, the same information that would be obtained at a formal conference can be obtained through direct individual contact with claimants and departments. Claims Examiners will assess the need for a conference on a case-by-case basis. However, conferences will continue to be provided when requested by the claimant. This streamlined process will result in an overall decrease in processing time by eliminating the need to coordinate schedules among claimants, Claims Examiners, and department representatives. In addition, it is likely to result in more cooperation from departments who more readily respond to phone calls or e-mail than a scheduled conference.

Finally, the Claims Examiner process will continue to improve as claims involving issues previously addressed become more frequent, resulting in less time needed to identify and research relevant legal issues. Checklists and other tools are being developed to assist in capturing necessary information so that it may be easily applied to future claims.

Discussion

The past year has shown that the Government Claims Program conferences conducted by Claims Examiners offers a level of service to claimants and departments that is not possible at Board meetings because of the time constraints. Claimants and departments are generally allotted one hour to present their issues before a Claims Examiner, in contrast with the 10 to 15 minutes previously allotted at Board meetings. In addition, many issues are clarified during the Claims Examiner process, which has drastically increased the quality of staff recommendations to the Board.

After monitoring the workload coming into the Claims Examiner process, it has been determined that to continue the process, it would require one additional staff person. Although the level of the Claims Examiner has yet to be determined by Human Resources, staffing at the Staff Services Manager I level appears appropriate, given the level of knowledge required and the interactions with other departments.

Recommendation

Staff recommend that the Board continue its use of Claims Examiners to investigate and make recommendations to the Board on claims made against the State.